Filed 11/14/14 In re David B. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re DAVID B., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. DAVID B., Defendant and Appellant.	F067727 (Super. Ct. No. 09CEJ601306-2V4) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Fresno County. Gary R. Orozco, Judge.

Conness A. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Amanda D. Cary, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Levy, Acting P.J., Poochigian, J. and Detjen, J.

Minor David B. contends the juvenile court erred by finding true the allegations of his probation violation petition because he admitted the allegations without being fully advised of his *Boykin-Tahl* rights.[1] We affirm.

BACKGROUND

On May 26, 2011, the juvenile court found that David had committed two counts of receiving stolen property (Pen. Code, § 496d, subd. (a)), and it ordered a maximum period of confinement of three years eight months. The court adjudged him a ward of the court and placed him on probation. (Welf. & Inst. Code, § 602.)[2]

On November 29, 2011, August 29, 2012, and December 13, 2012, supplemental petitions were filed pursuant to section 777, alleging that David violated his probation conditions. David appeared in court on each petition and admitted the violations. At those three hearings, held on December 8, 2011, October 4, 2012, and December 14, 2012, the juvenile court thoroughly advised and questioned David on the rights he was giving up by admitting the probation violations.

On March 12, 2013, the probation department filed a fourth supplemental petition alleging probation violations, this time failing to obey directives of his parent and failing to abide by the furlough rules and regulations.

At the detention hearing on May 22, 2013, David admitted the allegations in the petition as follows:

> "[DAVID'S COUNSEL]: At this time, he waives formal reading of the petition, formal reading of statutory and Constitutional rights. And at this time, he's indicated that he's going to admit to the allegations alleged.

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[1] *Boykin v. Alabama* (1969) 395 U.S. 238 (*Boykin*); *In re Tahl* (1969) 1 Cal.3d 122 (*Tahl*).

[2] All statutory references are to the Welfare and Institutions Code unless otherwise noted.

"THE COURT: [David], Probation is alleging that you violated your probation terms. They indicate you were released from furlough with instructions to return, and that you did not return. Is that an allegation you are willing to admit?

"[DAVID]: Yes, sir.

"THE COURT: Are you admitting the allegation because it is true?

"[DAVID]: Yes, sir.

"THE COURT: Do you understand that you have the right to a formal hearing on the allegation?

"[DAVID]: Yes, sir.

"THE COURT: And are you willing to give up that right so that I can take your admission today?

"[DAVID]: Yes, sir, 'cause I rather—I rather get sentenced because I got three kids that were just born, so—

"THE COURT: Say that last part again.

"[DAVID]: I got three kids that were just born, a set of twins, and my first single boy that was born on May 2nd. So I rather hurry so I could get out so I can go see them.

"THE COURT: Based on [David's] statement that the allegation of probation violation is true, the Court will find that [David] is in violation of his probation terms. [¶] Set the matter for disposition on June 6th, 8:00, Department B, as in boy. [¶] … [¶]

"[DAVID'S COUNSEL]: And, Your Honor, did you go over his rights about having, I guess, a hearing?

"THE COURT: I do something of an abbreviated recitation of rights if it's a violation of probation. He indicated he's willing to give up his right to a hearing and allow me to take his admission.

"[DAVID'S COUNSEL]: Okay."

On May 29, 2013, the probation officer spoke to David. When they discussed what would constitute a fair disposition, David told the probation officer that he thought

he should be committed for a year. When the officer asked him why he felt he needed a year in custody, he said, "[I]t is probably what is best for me." The probation officer also noted in his report that, at 17 years old, David was making his eighth appearance before the juvenile court for disposition.

At the disposition hearing on June 6, 2013, the juvenile court committed David to the New Horizons Program for 365 days. When the court informed David of his right to appeal, he responded as follows:

> "I was going to say I'm—I do want to have an appeal because I got—as I said on the—on the letter, I got kids that I'm afraid I'm going to miss their birthday, but it's not really that, I got kids that are supposed to be born without—my last son is supposed to be born soon, and that—I was—I was planning to get a couple of months, but just my appeal [*sic*] was saying that I was going to end up getting YA time, I was going to get sent up, so I said, if anything—he said what would you like, I said I would like to get a couple months. But if I had to, if they're going to send me to YA, what I'd like to see in court, if they're going to give me that much time, is at least for me to get a year. I didn't—I didn't want a year flat. I would have took the 107 days because I would have been out to see my son."

DISCUSSION

David contends that, prior to his admission of probation violations at the May 22, 2013, hearing, the juvenile court failed to advise him of his right to confront and cross-examine witnesses, his privilege against self-incrimination, and the possible consequences of his admission. He argues there is no indication in the record that he discussed his constitutional rights with his attorney. Finally, David contends the court's failure to advise cannot be found harmless, despite his prior experience with the criminal justice system, because the totality of circumstances do not support a conclusion that he was aware of the rights he was waiving or the consequences of his admission. He explains that during his admission, he was "distracted by and focused on the recent birth of his children," and he was later surprised by the court's disposition. Thus, he argues, it

is reasonable to infer that he did not knowingly, intelligently, and voluntarily waive his constitutional rights.

"Under both the state and federal Constitutions, a valid plea of guilty must be preceded by a knowing and voluntary waiver of [a] defendant's rights. '[T]he record must contain *on its face* direct evidence that the accused was aware, or made aware, of his right to confrontation, to a jury trial, and against self-incrimination, as well as the nature of the charge and the consequences of his plea.' [Citations.] 'No specific formula is required, as long as the record shows by direct evidence that the accused was fully aware of his rights.' [Citation.]" (*People v. Wrest* (1992) 3 Cal.4th 1088, 1102-1103; see *Boykin, supra,* 395 U.S. at pp. 242-243; *Tahl, supra,* 1 Cal.3d at p. 132.) Thus, "'*Boykin* does not require specific articulation of each of the three rights waived by the guilty plea, as long as it is clear from the record that the plea was voluntary and intelligent ….' [Citation.] … The record must affirmatively demonstrate that the plea was voluntary and intelligent under the totality of the circumstances. [Citations.]" (*People v. Howard* (1992) 1 Cal.4th 1132, 1178, fn. omitted.) In *Tahl, supra,* 1 Cal.3d 122, the California Supreme Court required express advisement and waiver of the three *Boykin* rights. (*Tahl, supra,* at pp. 132-133.) In *In re Yurko* (1974) 10 Cal.3d 857, the California Supreme Court held that *Boykin-Tahl* admonitions must be given to any defendant who chooses to admit the truth of prior conviction allegations. (*In re Yurko, supra,* at pp. 860-863.) In a juvenile proceeding, minors have all the *Boykin-Tahl* rights except the right to a jury trial. (*In re Ronald E.* (1977) 19 Cal.3d 315, 321.)

It is well established, however, that *Boykin-Tahl* principles do not apply to probation revocation hearings. (*People v. Clark* (1996) 51 Cal.App.4th 575, 582, overruled on other grounds in *People v. Mendez* (1999) 19 Cal.4th 1084, 1098; *People v. Garcia* (1977) 67 Cal.App.3d 134, 137-138; *People v. Dale* (1973) 36 Cal.App.3d 191, 194-195.) "At a probation revocation hearing the issue is different from that presented on

the original charge, the procedure is different, and the method of proof is different, to such an extent that the forms of procedure prescribed in *Boykin* and *Tahl* have little relevance." (*People v. Garcia*, *supra*, at p. 137.) Where the allegations of a section 777 petition constitute probation violations, the minor is in a position analogous to that of an adult probationer. (See *In re Eddie M.* (2003) 31 Cal.4th 480, 491, 501-502.)

Here, David's allegations constituted probation violations and thus *Boykin-Tahl* principles did not apply at his hearing. He had notice of the allegations and was represented by counsel. The juvenile court explained the nature of the violations to David and told him he had a right to a further hearing on the allegations. Given the nature of the proceeding, a formal admonishment was not required, especially since David's violations were not criminal offenses. "A probation revocation hearing involves some, but by no means all, of the fundamental rights afforded a defendant at trial." (*People v. Dale*, *supra,* 36 Cal.App.3d at p. 195.) We conclude the court's statement constituted an adequate advisement of David's constitutional rights.

If, on the other hand, the advisement was not adequate, we conclude the juvenile court's failure was harmless because the totality of the circumstances show the admission and waiver were voluntary and intelligent. (*People v. Mosby* (2004) 33 Cal.4th 353, 360-361; *People v. Howard*, *supra,* 1 Cal.4th at p. 1175.) David was not a newcomer to juvenile court proceedings. (See *People v. Mosby*, *supra,* at p. 365 [prior experience with the criminal justice system may support a conclusion that a defendant knew his rights].) In fact, he had attended three other probation revocation hearings within the year and one-half prior to this probation revocation hearing, and at each of those three prior hearings, he was fully advised of his rights. Furthermore, the surprise David claims to have experienced upon hearing the juvenile court's one-year disposition is belied by his own statement to the probation officer about one week before disposition that he needed

and should be committed to a year in custody. In light of all the circumstances, any *Boykin-Tahl* error was harmless.

DISPOSITION

The juvenile court's findings and orders are affirmed.